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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,
Plaintiff,
v.
M. CHAPPUIS,
Defendant.

No. 2:19-cv-1467-WBS-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. He seeks leave to proceed in forma pauperis. See 28 U.S.C. § 1915(a). For the reasons stated below, the court finds that plaintiff has not demonstrated he is eligible to proceed in forma pauperis.

A prisoner may not proceed in forma pauperis:

if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). Court records reflect that plaintiff has incurred at least three “strikes” for purposes of § 1915(g). See (1) *Trujillo v. Sherman*, No. 1:14-cv-1401 BAM (E.D. Cal.), (dismissed on April 24, 2015, for failure to state a claim); (2) *Trujillo v. Ruiz*, No. 1:14-cv-0975

1 SAB (E.D. Cal.) (dismissed on January 6, 2016, for failure to state a claim); (3) *Trujillo v.*
2 *Gomez*, No. 1:14-cv-1797 DAD DLB (E.D. Cal.) (dismissed on August 5, 2016, for failure to
3 exhaust administrative remedies¹); (4) *Trujillo v. Gonzalez-Moran*, No. 17-15200 (9th Cir.)
4 (dismissed on July 28, 2017, finding that action was frivolous, and denying plaintiff’s motion to
5 proceed in forma pauperis); and (5) *Cruz v. Gomez*, No. 1:15-cv-0859 EPG (E.D. Cal.) (dismissed
6 on February 3, 2017, for failure to state a claim).

7 The section 1915(g) exception applies if the complaint makes a plausible allegation that
8 the prisoner faced “imminent danger of serious physical injury” at the time of filing. 28 U.S.C.
9 § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). Here, the allegations do
10 not demonstrate that plaintiff was under an imminent danger of serious physical injury when he
11 filed this action on July 26, 2019. *See* ECF No. 1 (alleging that he was assaulted on three discrete
12 dates: August 11, 2016, August 29, 2018, and June 27, 2019 because of a false report accusing
13 him of sexual misconduct). Contrary to plaintiff’s assertion, these allegations of prior assaults,
14 spaced many months to years apart, fail to demonstrate that he was faced with an imminent
15 danger of serious physical harm at the time he filed his complaint. *See* ECF No. 1 at 3.
16 Plaintiff’s application for leave to proceed in forma pauperis must therefore be denied pursuant to
17 § 1915(g). Plaintiff must submit the appropriate filing fee in order to proceed with this action.

18 Accordingly, because plaintiff has not paid the filing fee and is not eligible to proceed in
19 forma pauperis, IT IS RECOMMENDED that:

- 20 1. Plaintiff’s application to proceed in forma pauperis (ECF Nos. 5, 7, 9) be denied; and
- 21 2. Plaintiff be ordered to pay the \$400 filing fee within fourteen days from the date of any
22 order adopting these findings and recommendations and be warned that failure to do so will result
23 in the dismissal of this action.

24 These findings and recommendations are submitted to the United States District Judge
25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
26 after being served with these findings and recommendations, any party may file written

27 ¹ This case qualifies as a strike under *El-Shaddai v. Zamora*, 833 F.3d 1036, 1043-44
28 (2016), because plaintiff’s failure to exhaust was clear from the face of the complaint.

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
3 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
4 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

5 Dated: March 19, 2020.

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7 EDMUND F. BRENNAN
8 UNITED STATES MAGISTRATE JUDGE
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